

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GARY FLETT,

Plaintiff,

vs.

ELDON VAIL, and MAGGIE
MILLER-STOUT,

Defendants.

NO. CV-09-091-CI

ORDER ADOPTING REPORT AND
RECOMMENDATION, DISMISSING
COMPLAINT IN PART, DECLINING
SUPPLEMENTAL JURISDICTION, AND
DIRECTING SERVICE ON REMAINING
DEFENDANTS

*****ACTION REQUIRED*****

BEFORE THE COURT is Plaintiff's Objection to the Report and Recommendation to dismiss his First Amended Complaint in part (Ct. Rec. 6.) After review of the record and being fully advised in this matter

IT IS ORDERED the Report and Recommendation is **ADOPTED** in its entirety.

In his objections, Plaintiff contends the Magistrate Judge misinterpreted his complaint when stating Plaintiff had alleged negligence. Plaintiff asserts Defendants Himlie and Barfknecht acted maliciously and recklessly in violation of established policies when they destroyed his personal property.

Regardless whether the state officials acted negligently or intentionally and without authorization, deprivation of property does not give rise to a federal cause of action under § 1983 if the plaintiff has an adequate post-deprivation state remedy. *Hudson v. Palmer*, 468

1 U.S. 517, 533 (1984); *Parratt v. Taylor*, 451 U.S. 527, 544 (1981).
 2 Washington law provides that prisoners who believe property of value
 3 belonging to them has been lost or damaged due to tortious conduct by
 4 prison staff may file a claim pursuant to RCW 4.92.100. See also WAC
 5 137-36-060.

6 State law provides Plaintiff an adequate post-deprivation state
 7 remedy, regardless whether he is satisfied with that remedy. His § 1983
 8 personal property claim against Defendants Himlie and Barfknecht for
 9 monetary damages in the amount of \$12,000,000.00 lacks an arguable basis
 10 in law. Therefore, **IT IS ORDERED** Plaintiff's claim against Defendants
 11 Himlie and Barfknecht is **DISMISSED with prejudice** as to his federal
 12 claim, but **without prejudice** as to any state claim. The District Court
 13 Executive shall **TERMINATE** Defendants Himlie and Barfknecht from this
 14 action and **REMOVE** them from the caption of the First Amended Complaint
 15 (Ct. Rec. 6.)

16 **SERVICE OF REMAINING CLAIM**

17 Mr. Flett has alleged facts sufficient for service of process on
 18 Defendants Eldon Vail and Maggie Miller-Stout. He seeks declaratory
 19 relief, challenging prison regulation DOC 560.210.II.A.4. under the
 20 Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C.
 21 § 2000cc et seq. (2000) ("RLUIPA"). Therefore, **IT IS ORDERED**:

22 1. The United States Marshal, in compliance with Federal Rule of
 23 Civil Procedure 4(c) (2) and (d), shall send, by First Class Mail, the
 24 Summons, First Amended Complaint (Ct. Rec. 4) and this Order, upon
 25 Defendants Vail and Miller-Stout, together with a Notice of Lawsuit and
 26 Request for Waiver of Service of Summons, two copies of the Waiver of
 27

1 Service of Summons and a return envelope, postage prepaid, addressed to
2 the sender. The costs of mailing shall be advanced by the United
3 States.

4 2. The District Court Executive shall mail a copy of the First
5 Amended Complaint (Ct. Rec. 4) to the Office of the Attorney General for
6 the State of Washington, Criminal Justice Division.

7 3. Defendants shall file an answer or otherwise respond to
8 Plaintiff's claims regarding RLUIPA contained in the First Amended
9 Complaint within sixty (60) days after mailing (if formal service is
10 waived), forty-five (45) days if service is not waived. Failure to so
11 respond may result in entry of a default judgment, pursuant to Local
12 Rule 55.1. A Notice of Appearance is not an adequate response.

13 4. **The District Court Executive shall set a case management**
14 **deadline sixty (60) days after the date of this Order.**

15 5. Plaintiff shall serve upon Defendants, or if appearance has
16 been entered by counsel, upon their attorney, a copy of every further
17 pleading or other document submitted for consideration by the court. He
18 shall include, with the original paper to be filed with the District
19 Court Executive, a certificate stating the date a true and correct copy
20 of any document was mailed to the Defendants or to their counsel. Any
21 paper received by a District Judge or Magistrate Judge which has not
22 been filed with the District Court Executive or which fails to include
23 a certificate of service will be disregarded by the court. Plaintiff is
24 also advised that, throughout this action, he must notify the District
25 Court Executive regarding any change of address and phone number (at
26 least a message phone). Failure to do so might result in the dismissal
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1 of the action if the court is unable to contact Plaintiff.

2 **SUPPLEMENTAL JURISDICTION**

3 Plaintiff seeks to invoke this Court's supplemental jurisdiction
4 over his state property claim, or in the alternative to transfer that
5 claim to a State Superior Court. The property claim does not form part
6 of the same case or controversy as Plaintiff's challenge to a prison
7 regulation under RLUIPA. 28 U.S.C. § 1337(a). Having dismissed
8 Plaintiff's § 1983 property deprivation claim, the Court declines to
9 exercise jurisdiction over a state law claim of reckless and malicious
10 deprivation of property. The court also declines Plaintiff's invitation
11 to transfer this action to a state court due to lack of jurisdiction.
12 If he wishes to do so, Plaintiff may refile his deprivation of property
13 claim in state court.

14 **IT IS SO ORDERED.** The District Court Executive is directed to
15 enter this Order and forward a copy to Plaintiff.

16 **DATED** this 23rd day of October 2009.

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S/ Edward F. Shea
19 EDWARD F. SHEA
20 UNITED STATES DISTRICT JUDGE
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